

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**ZACHERY P. MCQUADE,**

**Defendant.**

**CASE NO. 8:07CR191**

## TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing Nos. 25, 26). The government adopted the PSR. (Filing No. 29.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Court has also considered the Defendant's motion for downward departure and supporting brief (Filing Nos. 28, 27.)

## Objections

The Defendant objects to ¶¶ 28, 30 and 31. The Defendant's objections were considered by the probation officer as reflected in the Addendum to the PSR. The Court agrees with the probation officer's reasoning in each instance, and therefore the objections to ¶¶ 28, 30 and 31 are denied for the reasons set out in the Addendum to the PSR.

## Downward Departure

The Defendant moves for a downward departure on the following bases: disparity between federal and state sentences for similar crimes; lack of criminal history; aberrant behavior; and application of the same reasoning used by President Bush in pardoning Scooter Libby.

The Court will hear the motion at sentencing insofar as it pertains to the Defendant's lack of criminal history. Otherwise, the motion is denied. Specifically, the Court notes the

following: no convincing legal authority was presented in support of the disparity argument; the nature of the Defendant's conduct contradicts the aberrant behavior argument; and the Scooter Libby argument is without support and has no bearing on this case.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing Nos. 25, 26) are denied;

2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

6. The Defendant's motion for downward departure (Filing No. 28) will be heard at sentencing insofar as the motion relates to the Defendant's lack of criminal history.

DATED this 13<sup>th</sup> day of November, 2007.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge